

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

FRANK R. OWENS,

Plaintiff,

vs.

VERLYN ISAAC, *et al.*,

Defendants.

No. C06-0016-EJM

**ORDER**

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FRANK R. OWENS,

Plaintiff,

vs.

KEVIN HAGENMANN, *et al.*,

Defendants.

No. C06-0172-EJM

**ORDER**

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This matter is before the court on the plaintiff's notice of appeal, motion to appeal in forma pauperis and motion for a preliminary injunction. The plaintiff submitted his notice and motions on or about December 16, 2008.

The court previously granted the plaintiff in forma pauperis status, and it is appropriate to allow the plaintiff to proceed on appeal in forma pauperis. *See* Fed. R. App. P. 24. Pursuant to the procedure set forth by the Eighth Circuit Court of Appeals in *Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997), the plaintiff is liable for the \$455.00 appeal fees upon the filing of his notice of appeal. *Henderson*, 129 F.3d at 484; *see also* 28 U.S.C. § 1914(b) (directing Clerk of Court to collect "additional fees only as are prescribed by the Judicial Conference of the United States"). Given his current financial situation, the plaintiff is not required to submit an initial appellate partial fee. *Id*;

*see also* 28 U.S.C. § 1915(b)(1). Nonetheless, the plaintiff is directed to submit monthly payments of 20 percent of the preceding month's income credited to his inmate account until the \$455.00 appeal fees are paid in full. 28 U.S.C. § 1915(b)(2). The agency having custody of the plaintiff is directed to forward payments from his inmate account to the Clerk of Court each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2).

Concerning the motion for a preliminary injunction, the plaintiff merely wants the court to order the business office at the Iowa State Penitentiary to forward a certified copy of his inmate account for purposes of obtaining in forma pauperis status under 28 U.S.C. § 1915. Having concluded that in forma pauperis status is warranted and the plaintiff is not responsible for paying the initial partial payment, there is no reason to obtain a certified copy of the plaintiff's inmate account.

Based on the foregoing, the plaintiff's motion to appeal in forma pauperis is granted and the motion for a preliminary injunction is denied as moot. The Clerk of Court is directed to forward this matter to the Eighth Circuit Court of Appeals for further disposition.

**IT IS SO ORDERED.**

DATED this 23<sup>rd</sup> day of December, 2008.



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JON STUART SCOLES  
Magistrate Judge  
UNITED STATES DISTRICT COURT

**TO: WARDEN/ADMINISTRATOR**  
**Iowa State Penitentiary, Fort Madison, Iowa**

**NOTICE OF COLLECTION OF FILING FEE**

You are hereby given notice that Frank R. Owens, #1114355, an inmate at your facility, filed an appeal in the United States District Court for the Northern District of Iowa: *Owens v. Isaac, et al.*, Case No. C06-0016-EJM; *Owens v. Hagemann, et al.*, Case No. C06-0172-EJM. The inmate was granted in forma pauperis status pursuant to 28 U.S.C. § 1915(b), which requires partial payments of the \$455.00 appellate fees. Because the prisoner has insufficient funds in his account, the court has not assessed an initial partial filing fee. 28 U.S.C. § 1915(b)(1); *see also Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). Nonetheless,

. . . , the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). You must monitor the account and send payments to the Clerk of Court according to the system provided in 28 U.S.C. § 1915(b)(2).

Please make the appropriate arrangements to have these fees deducted and sent to the court as instructed.

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Robert L. Phelps  
U.S. District Court Clerk  
Northern District of Iowa